

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

MARVEL MA,

Plaintiff,

v.

**BOARD OF GOVERNORS OF
MISSOURI STATE UNIVERSITY,**

Defendant.

Case No. 6:11-cv-3048-BP

**DEFENDANT’S MOTION FOR JUDGMENT ON THE PLEADINGS
REGARDING PLAINTIFF’S REQUEST FOR PUNITIVE DAMAGES
AND SUGGESTIONS IN SUPPORT**

COMES NOW Defendant Board of Governors of Missouri State University (the “University” or “MSU”), and for its Motion for Judgment on the Pleadings Regarding Plaintiff’s Request for Punitive Damages states as follows:

1. Plaintiff’s Second Amended Complaint asserts a discrimination claim pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*, against the University.

Plaintiff’s Second Amended Complaint, Doc. 42, ¶¶ 6-18.¹

2. Plaintiff seeks an award of punitive damages in his Second Amended Complaint. Doc. 42, ¶¶ 18, 30(f).

3. Punitive damages may not be recovered in a Title VII action against a government, government agency, or political subdivision such as a public University. *See* 42 U.S.C. § 1981a(b)(1).

¹ Plaintiff also asserted a common law tortious interference claim against the University in his Complaint (Doc. 42, ¶¶ 19-29), although this claim has since been abandoned and dismissed. Order Denying Summary Judgment, Doc. 128, p. 15.

4. MSU is a public university created by the Missouri legislature. R.S. Mo. §§ 174.020, *et seq.* MSU is under the general control and management of a Board of Governors, which consists of nine voting members appointed by the Governor with the advice and consent of the Missouri Senate. Mo. Rev. Stat. §§174.040, 174.450, 174.453.2, and 174.455. This Board has the same powers, duties, authority, responsibilities, privileges, immunities, liabilities and compensation as prescribed for the board of curators of the University of Missouri. Mo. Rev. Stat. § 174.457. Furthermore, MSU is self-insured through the State of Missouri Legal Expense Fund, set forth in Mo. Rev. Stat. §105.711, as an agency of the state.

5. MSU is clearly a public entity and agency of the state, and prior case law supports this conclusion. *See e.g., Dorlon v. City of Springfield*, 843 S.W.2d 934, 939 (Mo. Ct. App. 1992) (holding that the Regents of Southwest Missouri State University – the previous name of MSU – were a public entity protected by the doctrine of sovereign immunity under Mo. Rev. Stat. § 537.600); *see also Sherman v. The Curators of the Univ. of Mo.*, 871 F. Supp. 344 (W.D. Mo. 1994) (finding that the University of Missouri was an “arm of the state” for purposes of Eleventh Amendment immunity).

6. Plaintiff pleads in his Complaint that the University is a public entity, stating that MSU “is a state university in Springfield, Missouri created under the statutes of the State of Missouri.” Doc. 42, ¶ 2.

7. Courts in both the Eighth Circuit and the Western District of Missouri have repeatedly held that punitive damages cannot be awarded against such entities in Title VII cases. *See e.g., Okruhlik v. Univ. of Ark.*, 255 F.3d 615, 623 (8th Cir. 2004) (noting that “Congress explicitly excluded states from liability for punitive damages” in Title VII cases); *Bauer v. The Curators of the Univ. of Mo.*, No. 07-04044-CV-C-FJG, 2010 U.S. Dist. LEXIS 42825, at *23-

24 (W.D. Mo. May 3, 2010) (finding that the University of Missouri is a “public corporation and body politic of the State of Missouri” and thus, is not liable for punitive damages under Title VII).

8. Because MSU is a public entity that is an arm of the state of Missouri, Plaintiff is statutorily precluded from being awarded punitive damages from the University for its Title VII claim.

WHEREFORE, Defendant respectfully requests that this Court enter judgment on the pleadings, denying Plaintiff’s request of punitive damages, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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**ATTORNEYS FOR THE BOARD OF GOVERNORS OF
MISSOURI STATE UNIVERSITY**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of September, 2014, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record. In addition, the foregoing was served by electronic mail upon the following:

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/s/ Ian P. Cooper
Attorney